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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, D.C. 20554

ORIGINAL


Re: Petition For Reconsideration

Dear Secretary Salas:

RFW, pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. 1.429, respectfully requests the Commission to accept the attached revised pleading. The company inadvertently submitted a timely filed petition which did not include footnotes. By accepting this revised pleading, it will serve the public interest, convenience and necessity.

Thank you for your consideration in this matter.

Respectfully Submitted,


M. F. Smith

cc: The Honorable William Kennard
The Honorable Michael Powell
The Honorable Harold Furchtgott-Roth
The Honorable Gloria Tristani
The Honorable Susan Ness

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's)
Rules Regarding Installment Payment)
Financing For Personal Communications)
Services (PCS) Licensees)
)

WT Docket No. 97-82

PETITION FOR RECONSIDERATION

Introduction

RFW PCS Inc. ("RFW" or the "Company"), pursuant to section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, respectfully requests reconsideration of certain aspects of the Second Report and Order in the above-captioned proceeding.¹

Specifically, the FCC should:

1. Provide C block licensees with a restructuring option which defers principal and interest payments for five years;
2. Permit licensees to utilize their full down payment in the Disaggregation and Prepayment options; and,
3. Adjust the Prepayment option to account for the net present value of forgoing installment payments.

RFW holds a broadband PCS licenses in the Kirksville, MO Basic Trading Area pursuant to Commission rules especially designed for Congressionally-recognized

¹ Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licenses, Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 97-82, FCC 97-342, rel. Oct. 16, 1997 ("Restructuring Order," "Further Notice").

designated entities ("DE's"). The company plans to operate a high quality, digital network capable of providing affordable, innovative services to customers.

C Block Licensees Will Foster Wireless Competition

The FCC, with the guidance of Congress, created the C and F block licenses to promote opportunities for small businesses to compete in the wireless industry. As a result of such initiative, more than 80 independent, entrepreneurial companies, including RFW, were awarded C block licenses. Such licensees plan to provide real, facilities-based competition in the telecommunications marketplace, if given the opportunity.

Today, the wireless industry is dominated by a few, large incumbents. Judging by the number of recently announced telecommunications deals, many carriers seem more inclined to consolidate rather than compete in the marketplace. Such a stranglehold on the wireless market diminishes the incentives to lower prices and provide new, innovative services. While the competition that the FCC envisioned for the wireless market has not materialized as quickly as anticipated, a robust C block will create additional competition, providing consumers with lower prices and new services.

The recently completed C block restructuring proceeding further strengthened the incumbents' dominance of the wireless marketplace. According to a recent study by the Yankee Group, "Overall, continued delay in building out C-through-F-block PCS networks could slow the pace of price decline and, therefore, the true competitive "free-for-all" we had been envisioning for the 1999-2000 time frame."²

² See Yankee Group, "Wireless State of the Union: It's Not an Ice Age, It's a Paradigm Shift,"

After the Restructuring order was released, a litany of analysts declared the incumbents the winners of the proceeding:

We continue to believe that with or without this [C-block restructuring] plan, most of the struggling C-Block licensees are still incapable of successfully financing their businesses. We also believe reauctions will most likely prove to be quite time consuming and delayed by litigation. The net result is that incumbent cellular and PCS operators will continue to benefit from the absence of a major previously expected competitor.³

Overall, however, it remains clear that for the most part buildout of the C-Block continues to occur later than originally expected. Ironically, some of the D, E, and F licenses may even be launched prior to the re-auction of returned C-Block licenses. From a competitive standpoint, this bodes well for those who are already in the marketplace with either a cellular or a PCS offering since it means additional competition will come later to the market.⁴

Even if elements of the current [C-block restructuring] plan are revisited, most C block licensees will still have to revise their business plans and face tremendous difficulties in financing their businesses. Moreover, larger players opting for the prepay option will be shadows of their former selves, and legal challenges could pose significant delays to the reauction process. This adds up to less competition than expected, later than expected, and bolsters our optimism on the prospects of established cellular and PCS carriers.⁵

The biggest loser in the Restructuring proceeding are U.S. taxpayers, who will neither receive the benefits of competition that the C block promises, nor be paid fair market value for spectrum in any reauction. A number of companies already are attempting to persuade the Commission to adopt reauction rules which will allow such companies to go "bottom fishing" in the reauction at taxpayers' expense.⁶

The C block experiment has not resulted in a significant amount of new facilities-based competition, as was anticipated. However, this public policy experiment can be a

³ See Barry A. Kaplan, Goldman Sachs, "The Week In Wireless," September 26, 1997.

⁴ See Linda J. Runyon, Merrill Lynch, "C-Block Winners Have Four Options," September 26, 1997.

⁵ See Brian G. Coleman, BT Alex Brown, "FCC Confirmations/C Block," October 3, 1997.

⁶ See, e.g., Comments of Omnipoint Corporation to *Further Notice* (November 13, 1997); Comments of Nextel Communications, Inc. ("Nextel") to *Further Notice* (November 13, 1997); Comments of AirGate

success if C block licensees are provided with commercially reasonable restructuring alternatives.

Deferral

RFW submitted comments in this proceeding advocating a five year deferral.⁷

Despite the significant number of other requests for a deferral option,⁸ including requests from Members of Congress⁹ and the Small Business Administration,¹⁰ the Commission declined to adopt a deferral option.¹¹ A deferral will provide licensees with sufficient time to construct networks and generate revenues adequate to begin interest payments.

The proof that a deferral will work in terms of allowing a company to build a network and generate revenues adequate to begin its interest payments is already available and incontrovertible: many companies, including Sprint, PCS PrimeCo, Omnipoint, Aerial, and Western Wireless all constructed and commercially "turned on" their networks in certain cities in an 18 to 24 month time period.

Wireless to *Further Notice* (November 13, 1997); Comments of Cook Inlet Region, Inc. to *Further Notice*, (November 13, 1997).

⁷ See RFW Comments at 2.

⁸ See BMU Comments at 2; ClearComm Comments at 3 and Reply Comments at 3; Chase Comments at 3; Alpine Comments at 9 and Reply Comments at 11; Horizon Comments at 13; SBC Comments at 9. R&S Comments at 21; Indus Comments at 3; MFRI Comments at 3; Magnacom Comments at 1-2; NABOB Comments at 3-4; KPCS Comments at 2; Urban Comm Comments at 9 and Reply Comments at 4; PCS Plus Comments at 2; Holland Comments at 3; Eldorado Comments at 2; MCI Comments at 2; Bear Stearns Comments at 3; Fortunet Comments at 4 and Reply Comments at 8; RTFC Reply Comments at 2; NextWave Reply Comments at 20; TRA Reply Comments at 5.

⁹ See The Honorable James M. Inhofe, Don Nickles, and Conrad Burns, *ex parte* letter, August 7, 1997; The Honorable Daniel Patrick Moynihan, *ex parte* letter, August 4, 1997; The Honorable Rick Boucher, *ex parte* letter, July 25, 1997; The Honorable Richard Burr, *ex parte* letter, August 11, 1997; The Honorable Thomas Davis, *ex parte* letter, July 30, 1997; The Honorable Ralph M. Hall, *ex parte* letter, September 15, 1997; The Honorable Sue W. Kelly, *ex parte* letter, August 11, 1997; The Honorable W.J. "Billy" Tauzin, *ex parte* letter, August 13, 1997; The Honorable W.J. "Billy" Tauzin and Edward J. Markey, *ex parte* letter, September 16, 1997.

¹⁰ See Jere W. Glover, Chief Counsel, U.S. Small Business Administration and Jenell S. Trigg, Assistant Chief Counsel, Telecommunications, to The Honorable Reed E. Hundt, Chairman, Federal Communications Commission, *ex parte* letter, September 8, 1997.

¹¹ See Order at para. 18.

A deferral is the only option in which licensees pay the Government the full amount promised. In early September, CBO estimated that the FCC decision would likely cost the Government between \$4 and \$6 billion in revenues, while a deferral proposal would likely cost much less.¹² A deferral also will ensure that the public receives the significant benefits that additional wireless competition promises, including greater innovation and lower prices.

Licensees Should Be Permitted to Apply 100 Percent of Their Down Payments in the Disaggregation and Prepayment Options

The FCC determined that licensees must forfeit 50 percent of their down payment under the Disaggregation option,¹³ and 30 percent of their down payment under the Prepayment option.¹⁴ We believe that this provision is significantly more punitive than the bipartisan plan crafted by Congressmen Tauzin and Markey, which provided for use of the entire down payment.¹⁵

RFW, like the majority of C block licensees, has made all its payments to the FCC. The C block collectively has submitted over \$1 billion to the U.S. Treasury in down payments. Allowing licensees to apply the full down payment to their license obligations will provide licensees with the opportunity to accelerate their efforts to build networks, commercialize service, and provide affordably priced services to consumers.

The Commission Should Adjust the Prepayment Option To Account for the Net Present Value of Forgoing Installment Payments

¹² See Congressional Budget Office Memorandum, "Impeding Defaults by Winning Bidders in the FCC's C Block Auction: Issues and Options," September 1997.

¹³ See Order at para. 40.

¹⁴ See Order at paras. 64-65.

¹⁵ See The Honorable W.J. "Billy" Tauzin and Edward J. Markey, *ex parte* letter, September 16, 1997.

Bid prices should be adjusted to account for the time value of money. By forcing bidders who select the Prepayment option to pay the face value, rather than the net present value, of their net high bids, the Commission is, essentially, raising the effective price paid by the licensees. As Chairman Hundt noted in his dissent of the Restructuring Order:

By requiring licensees that elect the option to prepay their licenses at the "nominal" bid price, the plan ignores the time value of money and inflates the effective price paid by the licensees that it purportedly seeks to assist. Put simply, the value of a bid paid out over ten years is significantly less – around 40% less – than that same bid in cash.¹⁶

Auction Participation

RFW Inc. strongly urges that the Commission not reconsider its existing rules limiting participation in the C block and any reaction to qualified entrepreneurs. Nextel Communications Inc. ("Nextel") in Comments filed in WT Docket No. 97-82 takes a very surprising position that "setting aside C block licenses solely for "small business" is not required by the Communications Act of 1934 and would not be in the public interest in light of today's competitive telecommunications marketplace."¹⁷ The C block policy is the product of many years of FCC efforts to specifically promote ownership by qualified small businesses. It would be highly anomalous that small businesses, even with discounts, should have to bid against companies such as Nextel Communications whose current market capitalization is \$6.46 billion. It is also surprising that a company owned in part by Craig McCaw, whose heritage is that of an entrepreneur, should now take the position that there is very little room for entrepreneurs in the market as it is now

¹⁶ See *Affirming and Dissenting Separate Statement of Chairman Reed E. Hundt Re: C Block Financing Issues*, Adopted September 25, 1997, Released October 16, 1997.

structured.¹⁵ The market structure has indeed changed over the last several years, but this is no time as a national policy for the FCC to draw up the gang plank and leave only incumbents to dominate a reauction.

Conclusion

Reconsideration of the Restructuring Order is necessary to promote wireless competition. The original Restructuring Order did not provide licensees with any commercially reasonable alternatives and, as a result, will delay the introduction of competition for which Congress and the FCC had hoped.

Respectfully Submitted,



M. R. Edwards

¹⁷ See Comments of Nottel to Further Notice at i. (November 13, 1997).

¹⁸ "Winners of the re-auctioned C Block licenses will likely be the sixth or seventh wireless entrant in a market, they will be seeking investments from a financial community already approached by numerous other competitors, and they will be facing fierce competition from well-financed, established telecommunications companies. These factors ensure that the "bar" has been raised even higher for re-auctioned license winners than it was for the original C Block winners, some of whom have declared bankruptcy." *Id.* at p. ii.